IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

OP.No. 12095 of 2002(M)

PETITIONER:

P.B.GOPAKUMAR, T.C.36/321,
SRUTHI SREE, MARAVANCHERI LANE,
POONKUNNAM, THRISSUR.

BY ADV. SRI.ELVIN PETER P.J.

RESPONDENTS:
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1. **THE LIFE INSURANCE CORPORATION OF INDIA,**
   REPRESENTED BY ITS CHAIRMAN, L.I.C. OF INDIA
   CENTRAL OFFICE, YOGAKSHEMA, MUMBAI-21.

2. **THE ZONAL MANAGER, L.I.C., OF INDIA,**
   SOUTHERN ZONAL OFFICE, L.I.C. BUILDING,
   ANNA ROADM, CHENNAI-600 002.

3. **THE SENIOR DIVISIONAL MANAGER,**
   L.I.C. OF INDIA DIVISIONAL OFFICE,
   JEEVAN PRAKASH, P.B.NO.1133, M.G.ROAD, ERNAKULAM.

BY ADV. SRI.S.EASWARAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 15/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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OP. NO.12095/2002

ORDER ON CMP. NO.20795/2002 IN OP. NO.12095/2002

DISMISSED

15.01.2002 **SD/- A.K.BASHEER, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE MEMO OF CHARGES DT. 31.1.91 ISSUED TO THE PETITIONER.

EXT.P2:- COPY OF THE REPLY DT. 10.2.91 SUBMITTED BY THE PETITIONER.

EXT.P3:- COPY OF THE LETTER DT. 1.11.89 SENT BY THE PETITIONER TO THE 3RD RESPONDENT.

EXT.P4:- COPY OF THE LETTER NO.P & IR, DT. 10.5.91 ISSUED BY THE DR. DIVL. MANAGER LIC.

EXT.P5:- COPY OF THE SHOW CAUSE NOTICE NO.P&IR. DT. 16.1.92 ISSUED BY THE LIC TO THE PETITIONER.

EXT.P6:- COPY OF THE ORDER NO.P &IR DT. 31.3.92 ISSUED BY THE SR. DIVL. MANAGER, LIC TO THE PETITIONER.

EXT.P7:- COPY OF THE ORDER NO.ER/DISCIPLINE DT. 31.12.93 ISSUED BY THE LIC.

EXT.P8:- COPY OF THE ORDER NO.P&IR/CPJ/VVM DT. 22.6.94 ISSUED BY THE SR. DIVL. MANAGER, LIC TO THE PETITIONER.

EXT.P9:- COPY OF THE REPRESENTATION DT. 8.7.94 SUBMITTED BY THE PETITIONER.

EXT.P10:- COPY OF THE ORDER NO. P&IR. DT. 19.8.94 ISSUED BY THE SR. DIVL. MANAGER, LIC TO THE PETITIONER.

EXT.P11:- COPY OF THE REPRESENTATION DT. 24.8.94 SUBMITTED BY THE PETITIONERTO THE CHAIRMAN, LIC.

EXT.P12:- COPY OF THE REMINDER SUBMITTED BY THE PETITIONER TO THE CHAIRMAN LIC..

tss

OP. NO.12095/2002

EXT.P13:- COPY OF THE APPEAL MEMORANDUM DT. 2ND SEPT. 1994 SUBMITTED BY THE PETITIONER BEFORE THE CHAIRMAN, LIC.

EXT.P14:- COPY OF THE RELEVANT EXTRACTS OF THE MINUTES OF THE PROCEEDINGS OF THE 3RD RESPONDENT.

EXT.P15:- COPY OF THE ENQUIRY REPORT SUBMITTED BY THE ENQUIRY OFFICER.

EXT.P16:- COPY OF THE SHOW CAUSE NOTICE NO. P & IR DT. 25.7.95 ISSUED BY THE LIC TO THE PETITIONER.

EXT.P17:- COPY OF THE REPLY DT. 10TH AUGUST, 1995, SUBMITTED BY THE PETITIONER TO THE SR. DIVL. MANAGER LIC.

EXT.P18:- COPY OF THE ORDER NO. P & IR. DT. 30TH OCTO. 1995 ISSUED BY THE SR. DIVL. MANAGER, LIC. TO THE PETITIONER

EXT.P19:- COPY OF THE ORDER NO.SZ/IR/DD. DT. 30TH MARCH, 1996 ISSUED BY THE ZONAL MANAGER, LIC.

EXT.P20:- COPY OF THE ORDER NO.ER-DISC. DT. 20TH MARCH, 2002 ISSUED BY THE APPELLATE AUTHORITY .

EXT.R3(a):- COPY OF THE JUDGMENT IN OP. NO.13186/96 OF THIS HONOURABLE COURT.

/TRUE COPY/

P.A. TO JUDGE

tss

A.K. Basheer, J.

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O.P. No. 12095 of 2002

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Dated this the 15th day of January, 2007.

J U D G M E N T

Is the order of dismissal of the petitioner from service of the Life Insurance Corporation of India legally valid and sustainable?

2. The above question arises for consideration in this original petition in the following facts and circumstances.

3. Petitioner was working as Development Officer in the Life Insurance Corporation (for short the Corporation) at its Irinjalakuda Branch during 1989-90. On November 23, 1989 petitioner was placed under suspension pending disciplinary proceedings. Later, he was served with Ext.P1 "charge sheet" dated January 31, 1991. The charge against the petitioner was that he had made "unauthorised" entries in the policy ledger sheets maintained at the branch in respect of 51 "policies" enumerated in Ext.P1. The unauthorised entries were allegedly made in respect of date of collection of premium of the above policies, thereby implying that the premium had been received at the branch office though actually no premium had been received on the dates entered by the petitioner in the ledger sheets. Petitioner had responded to the charge sheet. But his explanation was not found to be satisfactory. Consequently an Enquiry Officer was appointed who submitted Ext.P15 report after conducting an enquiry. In Ext.P15 report the enquiry officer concluded that the petitioner had unauthorisedly made entries in the policy ledger sheets as alleged in the charge sheet. The enquiry officer further

found that the petitioner had “tampered with the office records with a mala fide intention”. He had failed to maintain absolute integrity and devotion to duty and had acted in a manner detrimental to the interests of the Corporation.

4. The above report was accepted by the Corporation. The disciplinary authority issued Ext.P16 show cause notice to the petitioner on July 25, 1995 directing him to show cause in writing why the proposed penalty of dismissal from service be not imposed on him as provided under Regulation 39(1)(g) of Life Insurance Corporation of India (Staff) Regulations 1960. Though the petitioner submitted Ext.P17 reply to the show cause notice, the disciplinary authority was not satisfied with it. Consequently petitioner was dismissed from service with immediate effect. A copy of the said order passed by the disciplinary authority on October 30, 1995 is on record as Ext.P18. The said order was challenged by the petitioner before the appellate authority who by Ext.P19 confirmed the decision taken by the disciplinary authority. Though the petitioner preferred a revision as contemplated under Staff Regulation 47 before the Chairman, the said authority also concurred with the views taken by the lower authorities and dismissed the same. Ext.P20 is the copy of the order passed by the Chairman.

5. The prayer in this original petition is to issue a writ of certiorari to quash Exts.P18 to P20. There is a further prayer to issue a writ of mandamus or such other appropriate writ or direction to reinstate the petitioner in service and grant him all other incidental

reliefs.

6. It is contended by the learned counsel for the petitioner that the order of dismissal is per se vitiated for three reasons:

(1) Petitioner was not allowed to take the assistance of a Legal Practitioner to defend him in the disciplinary proceedings or atleast to engage an experienced employee working outside Irinjalakuda since all those who were working at Irinjalakuda were either juniors to the petitioner or inexperienced.

(2) The disciplinary authority had proceeded to issue show cause notice proposing to dismiss the petitioner from service even before serving a copy of the report to the petitioner.

(3) The appellate authority had not dealt with any of the contentions raised by the petitioner in their proper perspective and the appeal was rejected without any application of mind.

7. I have carefully perused the memo of charges and Ext.P15 report submitted by the Enquiry Officer. A perusal of the report unambiguously shows that the entire evidence on record was meticulously considered by the Officer. The management had examined three witnesses, one of whom was the Assistant Examiner from the Laboratory at Hyderabad who had examined the questioned documents. It is also seen that Exts.P1 to P7 documents were marked on the side of the management and Exts.D1 to D3 on the side of the petitioner. The petitioner has no case that he was not allowed to cross-examine the witnesses who were examined by the management or that he was denied an opportunity to examine witnesses on his side.

8. Significantly the management had produced the letter written by the petitioner himself admitting that he had made the relevant entries in the ledgers referred to in the memorandum of charges. The Assistant Examiner from Hyderabad had on comparison of the handwriting of the petitioner with that of the entries in the ledgers, had categorically certified that there was striking similarity to establish that the "questioned" and "standard" figures were written by the same person. In short, the Enquiry Officer on a threadbare analysis of all the evidence adduced by the parties concluded that there was no reason to disbelieve the case of the management. Accordingly the Enquiry Officer found that petitioner had unauthorisedly made entries in the policy ledger sheets in the "date of collection of premium column" implying receipt of premium. Thus, according to the Enquiry Officer, petitioner was guilty of the charge levelled against him and he had failed to maintain absolute integrity and devotion to duty.

9. It is not in dispute that the "Presenting Officer" appointed by the management was not a legally trained person and therefore the request made by the petitioner to allow him to engage a legal practitioner to defend him was rightly refused by the management. It is on record that the management had allowed the petitioner to seek the assistance of an employee working at Irinjalakuda Branch or in the divisional headquarters. The petitioner insisted that the officer should be somebody from outside Irinjalakuda. But this request was turned down. But this request was turned down. In my view the stand taken by the management was not arbitrary and unjust.

10. The next contention raised by the petitioner is that show cause notice proposing to impose punishment on him was issued by the disciplinary authority even before furnishing a copy of the Enquiry report to him. Learned counsel contends that the disciplinary authority had obviously decided not only to punish the petitioner but even the quantum thereof also at the time when the show cause notice was issued. Therefore the show cause notice was only an empty formality. More importantly, petitioner had no opportunity to see the enquiry report before he was served with the show cause notice.

11. Though the above contention, on first blush, appears to be attractive, I am afraid petitioner is not entitled to succeed on this ground either. It is on record that petitioner was heard at all stages of the proceeding. The disciplinary authority had imposed the punishment after considering the statement of objection filed by the petitioner and only after hearing him. The appellate authority had also heard the petitioner before deciding the appeal. Similarly the Chairman had also considered the memorandum submitted by the petitioner elaborately and all points raised by him were adverted to. Learned counsel for the petitioner has invited my attention to a decision of their Lordships of the Supreme Court in Canara Bank v. V.K.Awasthy (2005 (6) SCC 321) in support of his contention that failure to adhere to the rules of natural justice would vitiate the entire disciplinary proceeding. While allowing the appeal filed by the management and confirming the dismissal of the employee, their Lordships held that in a given case, post decisional hearing can obliterate procedural deficiency of a pre-

decisional hearing. The above observation was made by the Apex Court after noticing the fact that detailed charge sheet was served on the employee who not only submitted written reply but also participated in the proceedings . His explanations were considered and enquiry officer held the charges to have been amply proved. The Enquiry officer had recommended dismissal of the employee from service and the same was accepted by the disciplinary authority. It was further noticed that the appellate authority had also analysed the materials on record.

12. Keeping in view the above principles and particularly since the materials available on record in this case undoubtedly indicate that petitioner had been granted sufficient opportunity at every stage, I am satisfied that the mere omission to furnish a copy of the enquiry report before issuing show cause notice proposing to impose punishment, will not vitiate the entire disciplinary proceedings.

13. The other contention raised by the petitioner is that the appellate authority had passed Ext.P19 order without any application of mind. But a perusal of the order shows that all the points raised by the petitioner were meticulously examined by the said authority. The Chairman of the Corporation had also adverted to all the contentions raised by the petitioner in his memorial. In short, the disciplinary authority, the appellate authority and the Chairman had carefully examined the entire records in the light of the contentions raised by the petitioner.

14. Having perused the entire materials made available before

this Court, I do not find any reason to interfere with the punishment imposed on the petitioner. I am satisfied that the respondents had afforded sufficient opportunity to the petitioner to defend himself in the disciplinary proceedings. Not only the evidence of the Expert, but also the other pieces of evidence produced by the management before the Enquiry Officer undoubtedly proved that petitioner was guilty of the charge levelled against him. The confession made by the petitioner in his letter addressed to the employer also clinchingly established the guilt of the petitioner. Though a vague attempt was made by the petitioner to contend for the position that the said letter was obtained by coercion, he could not substantiate the above contention. In any view of the matter I am satisfied that the punishment imposed on the petitioner was warranted in the facts and circumstances of the case. There is no material illegality or irregularity in the proceeding culminating in the order of dismissal of the petitioner from service. There is no merit in any of the contentions raised by the petitioner.

Writ Petition fails and it is accordingly dismissed.

A.K. Basheer
Judge.

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